IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 2 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CONTROLLER OF ESTATE DUTY

Versus

A P KAILASSH NEMICHAND SHAH OF LATE SHAKRIBEN MANGALDAS

Appearance:

1. ESTATE DUTY REFERENCE No. 2 of 1994
MR TANVISH BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 20/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion:-

"Whether the Tribunal is right in law and on facts in holding that the value of the goodwill in respect of the two partnership firms (1) M/s. Kailash Investment Corpn. and (2) M/s. Neemeshkumar & Co. from whom the assessee has retired, was not includible for purpose of levying estate duty and the provisions of sec.9 would not be applicable ?"

2. Deceased Smt. Shakriben Mangaldas retired from partnership firm called M/s.Kailash Investment Corpn. w.e.f. 17-8-1984. She expired on 28-8-1984. The accountable person (AP) contended before the Assistant Controller of Estate Duty that nothing was includible in the estate of the deceased on the ground of the goodwill of the firm in view of the specific clause in the partnership deed that no partner was entitled to goodwill on death or retirement or on dissolution of the firm. The Assistant Controller, however, added the value of the goodwill in respect of both the firms of which the deceased was a partner by resorting to the provisions of Section 9 of the Estate Duty Act holding that there was a gift within a period of two years prior to the date of the death.

The Controller of Estate Duty (Appeals) dismissed the appeal filed by the accountable person. In second appeal, however, the Tribunal reversed the view of the lower authorities following the decision of the Patna High Court in the case of Harilal Agrawal, 121 ITR 278 and held that the value of the goodwill in respect of the two firms was not includible for the purpose of levying estate duty. The Tribunal held that the decision of the Supreme Court in the case of Mrudula Nareshchandra 160 ITR 343 relied upon by the revenue was not applicable to the facts of the instant case. Hence, this reference at the instance of the revenue.

3. Mr Tanvish Bhatt, learned counsel appearing for the revenue has vehemently submitted that the Tribunal erred in law in not applying the principle laid down by the Apex Court in Controller of Estate Duty vs. Mrudula Nareshchandra 160 ITR 342 and submitted that the said decision has been subsequently followed by this Court in Controller of Estate Duty vs. Krishnakant R. Shah (1999) 240 ITR 367.

4. Though served, none appears for the accountable person.

5. It is true that in CED vs. Krishnakant R. Shah, 240 ITR 367, this Court has explained and followed the decision of the Supreme Court in Controller of Estate Duty vs. Mrudula Nareshchandra, 160 ITR 342 and held that even if there was a clause in the partnership deed of the firm stating that partners would not be having any share in the goodwill of the firm, on the death of the deceased the goodwill was liable to be included in the principal value of the estate by treating it as a gift if the partner had retired or expired within a period of two years prior to the date of the death as contemplated by Section 9 of the Act. However, this Court further observed that even without deciding but assuming that there was a gift in favour of the remaining partners by the retiring partner on the date of retirement, such gift would be covered by Section 9 of the Estate Duty Act only if the gift was lacking in bonafides. In the facts of that case, the Court held that in view of the already stipulated terms of partnership deed that the retiring person would not have any share in the goodwill at the time of retirement and that the retirement being necessitated by sickness and physical disability, the transaction was not lacking in bonafides so as to fall within the scope of the gift covered by Section 9 of the Act.

6. In the facts of the present case, though the first principle laid down by this Court in the case of Krishnakant R Shah (supra) would apply and, therefore, it may have to be held that the Tribunal was not right in holding that as there was a clause in the partnership deed of the firm stating that the partners would not have any share in the goodwill of the firm, on the death of the deceased, goodwill was not liable to be included in the principle value of the estate. Even so, the question whether the alleged gift was lacking in bonafides would have to be examined so as to fall within the purview of Section 9 of the Act would require to be examined. However, that would be a question of fact or a mixed question of law and fact which would involve further investigation and warrant remand of the matter. However, we are not inclined to adopt that course for several cumulative reasons which are as follows:-

(i) In the instant case also, the deceased partner retired from the firm on 17-8-1984, and she expired on 28-8-1984 i.e. within a period of 12 days from the date of retirement. The

partnership deed also contained a clause that no partner was entitled to goodwill on death or retirement, or dissolution of the goodwill of the firm.

In this view of the matter, we are of the prima-facie view that the transaction in question cannot be said to be lacking in bonafides so as to fall within the purview of Section 9 of the Estate Duty Act.

(ii) The amount of goodwill which the Officers under the Estate Duty Act had sought to add to the estate of the deceased was only Rs.63,510/-.

(iii) The matter does not deserve any remand in a case where the death took place on 28-8-1984 and this reference has also remained pending for more than eight years

(iv) The Parliament itself has in its wisdom thought it fit to repeal the Estate Duty Act, 1953.

7. In view of the above discussion, while holding that even though the final decision of the Tribunal was not correct for the reasons given by the Tribunal, since there is no finding on record that the transaction constituting gift was lacking in bonafides, we are of the view that the provisions of Section 9 of the Estate Duty Act, 1953 were not attracted in the facts of the present case as regards the question of inclusion of value of the goodwill in the firms in which the deceased was a partner.

8. The Reference accordingly stands disposed of.

(M.S. Shah,J)

(K.A. Puj,J)

zgs/-